IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.7008 OF 2004

Indira Nagar Hutment Dwellers
Co.Operative Housing Society Ltd.
and Ors. ...Petitioners

Vs.

The Divisional Joint Registrar
and others ...Respondents

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Mr.A.S.Desai for Petitioners
Mr.D.A.Patil AGP for Respondent Nos. 1 to 3, 5 & 6
Mr.V.B.Yadav for Respondent no.4
Mr.Utangale i/b M/s. Utangale & Co. for Respondent no.2.

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CORAM : B.H.MARLAPALLE,J.

DATE : FEBRUARY 25,2005

P.C.:

1. Heard Mr.Desai the learned counsel for the petitioners, Mr.Patil AGP for Respondent Nos.1 to 3, 5 and 6, Mr.Yadav for Respondent no.4 and Mr.Utangale for Respondent no.2.

2. This petition challenges the order dated 21.2.2004 passed under Section 78 of the Maharashtra Co-Operative Societies Act, superseding the managing committee of the petitioner-society. The said order was challenged in Appeal no.38 of 2004 which came to be dismissed by the Divisional Joint Registrar Co-Operative Societies, Mumbai Division on 19.4.2004.

The revision filed before the State Govt. also came to be rejected by order dated 27.7.2004.

3. Before passing the order under Section 78 of the Maharashtra Co-Operative Societies Act, the Assistant Registrar had issued a show cause notice on 31.3.2003 and surprisingly the reply to the said show-cause notice has been filed for the first time during the course of hearing on 22.1.2004 i.e. almost after nine months. The said reply was taken into consideration and after hearing the parties concerned, the Assistant Registrar concluded in his order dated 21.2.2004 as under.

> "And whereas by considering the above facts I have come to the conclusion that the present managing committee is not managing the society the provisions of the M.S.C.Act, 1960 and Rules 1961 and the Bye-laws and therefore, there is a possibility that the rights of the members may be prejudicially affected and therefore, it is necessary to supersede the present managing committee. I am therefore, appointing Administrator in their place to run the day to day affairs of the Society."

4. The appellate authority had called for the record and considered the reasoning given by the Assistant Registrar and confirmed the order passed under Section 78 of the Maharashtra Co-Operative Societies Act. The concurrent findings recorded by the lower Court as well as revisional Court, do not call for

any interference.

5. The learned counsel for the petitioner-society submitted that the order passed under Section 79 of the Maharashtra Co-Operative Societies Act by the Assistant Registrar was stayed by the lower appellate authority and therefore, as far as issue of 21 members is concerned, the said could not have been taken into consideration while passing the impugned order. The impugned order is not based on that sole reason for deficiency. The Assistant Registrar has assessed the total working of the society and recorded his conclusion as reproduced hereinabove. Even otherwise, the appeal filed by the Society against the order passed under Section 79 of the Maharashtra Co-Operative Societies Act, was also finally disposed of in July, 2004.

6. This petition under Article 227 of the Constitution of India is devoid of merits and the same is hereby rejected summarily. Ad-interim order passed earlier, stands vacated forthwith.

[B.H.MARLAPALLE,J.]